

the amendment to Claim 56 is found in the specification and drawings as originally filed, at least in Figs 12 and 25.

Initially, Applicants withdraw the arguments set forth from page 8, line 20 to page 9, line 5 and from page 12, line 16 to page 15, line 15 of the Amendment filed on March 28, 2001, and now offer the following arguments in place of those withdrawn arguments.

As mentioned in the Amendment filed on March 28, 2001, although the Office Action of November 28, 2000 did not explicitly state that Claims 56-67 were rejected under 35 U.S.C. § 251 as being an improper recapture of the subject matter from canceled Claims 67-95 of Application No.

08/191,065, the Examiner's remarks relating to the rejection of Claims 43-50 under 35 U.S.C. § 251 discuss Claims 56-67.

As argued in that Amendment, Applicants respectfully submit that Claims 56-67 do not improperly recapture surrendered subject matter of Claims 67-95 from Application No.

08/191,065, because independent Claim 56 recites that the electron-emission layer has an electron emission region containing an electrical discontinuity, and also recites a matrix wire configuration and a signal applier for applying signals to row and column wires of that configuration,

whereas canceled Claims 67-95 did not recite any such features. Thus, independent Claim 56 varies materially from Claims 67-95 of Application No. 08/191,065.² Applicants also respectfully submit that independent Claim 56 also varies materially from canceled Claims 67-95 of Application No. 08/191,065, because Claim 56 recites first and second electrodes disposed on an upper surface of a substrate, and the first and second electrodes both lie in substantially a same plane that is substantially parallel to the upper surface of the substrate, whereas canceled Claims 67-95 each recited an insulating layer disposed between opposing electrodes on a planar substrate, a first portion of the insulating layer being disposed between the opposing electrodes and a second portion of the insulating layer being disposed between one of the electrodes and the planar substrate.

For these reasons, Applicants respectfully submit that Claims 56-67 do not recapture the subject matter of Claims 67-95 canceled from Application No. 08/191,065.

²/ MPEP § 1412.02 explicitly states that the recapture doctrine does not apply when a reissue claim varies materially from a surrendered claim.

Applicants now offer the following additional comments with regard to the Office Action's rejection of Claims 56-67 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 3, and 4 of commonly-assigned U.S. Patent 5,066,883 (Yoshioka et al.) in view of U.S. Patent 3,735,186 (Klopfer et al.) and U.S. Patent 4,575,765 (Hirt).

Independent Claim 56 has been amended to recite in further detail the manner in which the first electrode and second electrode are arranged on the substrate of the electron source plate. For example, as now amended, Claim 56 recites, in part:

"a first electrode disposed on an upper surface of said substrate,
a second electrode disposed on the upper surface of said substrate, said first and second electrodes both lying in substantially a same plane that is substantially parallel to the upper surface of said substrate; and

an electron-emission layer having an electron emission region included in at least a portion thereof, said electron emission region containing an electrical discontinuity, at least a portion of said electron-emission layer extending from a surface of the first electrode to a surface of the second electrode, for emitting an electron from the electron emission region upon an

application of a low voltage across said first and second electrodes" (Emphasis added).³

In contrast to the above-underlined features of Claim 56, Claims 1, 3, and 4 of U.S. Patent 5,066,883 each explicitly recite "an insulating layer disposed between opposing electrodes on a planar substrate, . . . wherein a first portion of said insulating layer is disposed between said opposing electrodes, wherein a second portion of said insulating layer is disposed between one of said electrodes and said planar substrate" None of the claims of Yoshioka et al. recites first and second electrodes disposed on an upper surface of a substrate, wherein both electrodes lie in substantially a same plane that is substantially parallel to the upper surface of the substrate, as set forth in Claim 56 of the present application.

Klopper et al. apparently is cited in the Office Action as evidence that it is well known to include an electron source in a display device. However, Applicants submit that even if Klopper et al. be deemed to teach all

^{3/} Applicants note that, as broadly construed, Claim 56 reads on a display apparatus in which an electron emission region included in an insulating layer is either spaced apart from, or not spaced apart from, electrodes.

that it is cited for in the Office Action, and even if the electron-emitting device defined in Claims 1, 3, and 4 of Yoshioka et al. were to be included in a display device of Klopper et al., as proposed by the Examiner, the resulting combination still would not include the above-underlined features of Claim 56.

Hirt apparently is cited in the Office Action as evidence that it is well known to provide matrix addressing of electron emitters. However, even if Hirt be deemed to teach such feature, and even assuming Hirt were to be combined with the electron-emitting device defined in Claims 1, 3, and 4 of Yoshioka et al. and the display device of Klopper et al. as proposed by the Examiner, the resulting combination still would not teach or suggest the above-underlined features of Claim 56.

For the foregoing reasons, Claim 56 is deemed to be clearly patentable over the prior art relied on by the Examiner.

A review of the other art of record has failed to reveal anything which, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as references

against independent Claim 56 herein. That claim is therefore believed patentable over the art of record.

Claims 57-67 are each dependent from independent Claim 56 discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

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